APPEAL NO. 040966
FILED JUNE 14, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing was held on March 29, 2004. The hearing officer decided that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the first quarter. The claimant appeals, asserting that he complied with all of the requirements of the 1989 Act. The respondent (carrier) urges affirmance.

DECISION

Reversed and rendered.

The claimant was a sheet metal worker for the employer. He testified that he was required to feed stainless steel sheets into a shearing machine, to be cut. On _____, the claimant was carrying a piece of sheet metal overhead with the help of a coworker; the sheet metal slipped and fell, cutting the claimant's right wrist. The evidence shows that the claimant suffered a severe laceration to his right wrist with injury to the ulnar nerve, flexor carpi ulnaris and superficialis to the ring finger, and the ulnar nerve artery. The parties stipulated that the claimant sustained a compensable injury. The claimant underwent surgery to repair the above conditions. The parties stipulated that the claimant reached maximum medical improvement on August 27, 2002, with a 24% impairment rating. The claimant did not commute any portion of his impairment income benefits.

The first SIBs quarter began on January 14, 2004, and continued through April 13, 2004, with a qualifying period from October 2, 2003, through December 31, 2003. It is undisputed that the claimant made a good faith job search during the qualifying period. At issue on appeal is whether the claimant's unemployment is a direct result of the impairment from the compensable injury, as required by Section 408.142(a)(2) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(c) (Rule 130.102(c)).

In this regard, the evidence shows that the claimant was required to lift and carry sheet metal with the help of one or more coworkers, depending upon the size and weight of the sheets, which ranged from 20 to 100 pounds. The claimant indicated that he would, then, load the sheet metal into the shearing machine, to be cut. The cut pieces were picked up and placed on a table "to break it or punch it or nip or even bend it." The evidence indicates that the claimant lost his job due to lost time from the compensable injury.

As of January 16, 2003, a functional capacity evaluation (FCE) provided that the claimant could perform the essential functions of a sheet metal worker but "lacks dominant right hand DIP flexion and pinch strength and may not be able to perform

continuous gripping and pinching work tasks at his previous work level for a full 8 hour shift." Another FCE report, dated December 2, 2003, indicated that the claimant was functioning at a medium level and could lift 41 pounds, push/pull 105 pounds, and demonstrated good grasping bilaterally. Based on the initial FCE, the claimant's orthopedic surgeon released the claimant to full duty but later clarified that the claimant was suited for medium level work. The carrier's required medical examination doctor agreed that the claimant was functioning at a medium level of work competency.

The claimant testified that he continues to lack full grip strength, has no ability to pinch, and experiences constant soreness in his dominant right hand. Notwithstanding, the claimant believes that he could return to his preinjury job, which he admits is medium level work. The claimant's supervisor, likewise, testified that the job of a sheet metal worker was medium level work and that the claimant would seldom be required to lift more than 40 pounds. The evidence shows that the claimant sought to return to work with the employer in his former position, but the employer had no positions available. In view of the evidence, the hearing officer believed that the claimant could perform his preinjury job functions and found that the claimant's unemployment was, therefore, not a direct result of the impairment from the compensable injury.

While the Appeals Panel has said that "direct result" may be established by evidence that an injured employee sustained an injury with lasting effects and could not reasonably perform the type of work being done at the time of the injury, it is not necessarily true that if a claimant is physically able to do his former work, then, as a matter of law, he cannot establish that his unemployment is a direct result of his impairment. Texas Workers' Compensation Commission Appeal No. 982993, decided February 5, 1999. Indeed, the Appeals Panel has attempted to clarify the test for "direct result" by stating:

> When a claimant has work restrictions imposed after a compensable injury, this, in effect will narrow the field regarding the number and types of jobs available to that claimant. A claimant who was injured at a sedentary job should not have a more difficult time proving direct result than a claimant who sustained an injury while doing a heavy job. [Under these facts], the focus should not be solely on what type of job the claimant had before or on whether the claimant is physically able to perform that old job. Instead, one must consider (1) why the claimant was underemployed during the filing period; and (2) whether the impairment affected or impacted the claimant's unemployment or underemployment situation.

Id. Furthermore, we have said that a claimant's unemployment need only be a direct result of the impairment from the compensable injury, but the impairment need not be the sole cause of the unemployment. Texas Workers' Compensation Commission Appeal No. 960721, decided May 24, 1996. Applying this standard to the evidence above, we conclude that the hearing officer's direct result determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). Accordingly, we

reverse the hearing officer's decision and render a new decision that the claimant is entitled to first quarter SIBs.

For the reasons stated above, the decision and order of the hearing officer is reversed and rendered.

The true corporate name of the insurance carrier is **ARCH INSURANCE COMPANY** and the name and address of its registered agent for service of process is

CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.

_____
Edward Vilano
Appeals Judge

CONCUR:

_____
Chris Cowan
Appeals Judge

_____
Gary L. Kilgore
Appeals Judge